Filed 2/16/05 In re Erica P. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re ERICA P., a Person Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY DEPARTMENT OF CHILDREN'S SERVICES, Plaintiff and Respondent, v. TRACY P. et al., Defendants and Appellants.	E035876 (Super.Ct.No. J-180661) O P I N I O N

APPEAL from the Superior Court of San Bernardino County. A. Rex Victor, Judge. Reversed with directions.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and Appellant Tracy P.

Leslie A. Barry, under appointment by the Court of Appeal, for Defendant and Appellant Billy M.

Ronald D. Reitz, County Counsel, and Regina A. Coleman, Deputy County Counsel, for Plaintiff and Respondent.

Lori A. Fields, under appointment by the Court of Appeal, for Minor.

INTRODUCTION

Tracy P. and Billy M., the parents of two-year-old Erica P., appeal from orders terminating their parental rights and placing Erica for adoption. They contend that these orders must be reversed because adequate notice was not given under the Indian Child Welfare Act (ICWA). The father also contends that the juvenile court erred in denying his request to place Erica with a paternal aunt. We conclude the juvenile court did not abuse its discretion in refusing to place Erica with her paternal aunt. We agree, however, that adequate notice of the proceedings was not given under the ICWA.

Early in the proceedings the father provided information to the Department of Children's Services (DCS) suggesting he had Indian ancestry. DCS gave notice to the Bureau of Indian Affairs (BIA) and the Navajo Nation. The Navajo Nation responded, saying it was unable to verify Erica's eligibility for enrollment based on the information provided. The notice did not include information that was apparently either in the possession of DCS or readily available from the parents (the birthplaces of the parents and the paternal grandfather's name). DCS did not show it was unable to obtain, with

reasonable diligence, this information and additional family history information that, if known, is required to be given under the ICWA (e.g., the paternal great grandparents' names and birth dates and birthplaces of paternal relatives). It is also unclear whether a copy of the dependency petition was included with the notice given.

Accordingly, we reverse the orders terminating parental rights and placing Erica for adoption. On remand, the juvenile court is directed to ensure that DCS: (1) fully investigates Erica's family history by undertaking a reasonable effort to obtain all of the information described in 25 Code of Federal Regulations part 23.11(d)(3) (2004);[1] and (2) gives proper notice to all identified tribes and the BIA area director of all the information listed in part 23.11, to the extent the information is known or may obtained with reasonable diligence. If no tribe intervenes in the proceedings after proper notice is given, then the orders terminating parental rights and placing Erica for adoption shall be reinstated.

FACTS AND PROCEDURAL HISTORY

Erica P. was detained and placed in foster care shortly after her birth in February 2002. Both she and the mother tested positive for amphetamine. The mother admitted using amphetamine the morning Erica was born. The mother had a history of drug use, failure to seek prenatal care, and prior contacts with social services. In late 2001, two of Erica's older half siblings were declared dependent children and were removed from the

[1] All further references to 25 Code of Federal Regulations are to the 2004 version.

mother's care after she failed to comply with a volunteer family service plan. The mother had been living in a filthy hotel room, and had neglected the older children. She had also failed to obtain prenatal care for Erica or prepare for Erica's birth.

In February 2002, the mother enrolled in a residential drug treatment program at Prototypes. The program allowed the mother and children to live together while the mother completed a 9- to 18-month program. The juvenile court authorized Erica and one of her half siblings to remain with the mother, provided the mother remained in a residential treatment program. The children were to be closely monitored at Prototypes, and the mother was unable to leave the program with them.

Shortly after Erica was detained, the mother told DCS that Billy M. was Erica's father, but she did not know his whereabouts or his date of birth. She said she believed he was incarcerated. DCS conducted an absent parent search and a Department of Justice check, but could not locate Billy M. Despite his absence, Billy M. was appointed counsel to represent him in February 2002.

Erica was declared a dependent child at a jurisdictional/dispositional hearing in April 2002. As of the date of the hearing, Billy M. had been located and was present in court. He was incarcerated at the West Valley Detention Center on charges of raping a minor between the ages of 10 and 14, and was facing a possible eight-year prison sentence. He and the mother were never married and his name was not on Erica's birth certificate. Before the hearing, DCS reported that the ICWA "may" apply, because Billy

M. "may be" of Indian ancestry. But because Billy M. was an alleged father, DCS did not immediately investigate his Indian ancestry or give notice under the ICWA. No services were ordered for Billy M. Erica was continued in the mother's care at Prototypes.

In November 2002, DCS filed a subsequent petition (Welf. & Inst. Code, §§ 342 & 387)[2] to remove Erica from the mother's care. The mother had asked that Erica be removed from her care to facilitate her continued treatment. Prototypes reported that the mother was not making significant progress. In September 2002, Erica's older half sibling was removed from the mother's care at Prototypes, because the mother had been physically and verbally abusing him. Erica was returned to foster care in November 2002.

Billy M.'s paternity was established in December 2002, following an order for paternity testing in October 2002. A jurisdictional/dispositional hearing on the subsequent petition was continued to January 2003 to allow DCS to give notice to the BIA and any identified tribes.

At the January 2003 hearing on the subsequent petition, DCS gave the juvenile court copies of certified mail receipts showing "proof of service" under the ICWA. One receipt shows that a certified letter was received by the BIA in Sacramento on January 2,

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[2] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

2003. The other receipt is undated and is signed by the Navajo Nation in Arizona. The record does not indicate whether any documents served on the BIA or Navajo Nation were presented to the court or the parties at the hearing. In any event, neither parent objected to the ICWA notice at the hearing. The augmented record includes form SOC 319 entitled "Notice of Involuntary Child Custody Proceeding Involving an Indian Child," and form SOC 318 entitled "Request for Confirmation of Child's Status as Indian." Apparently, the forms were served on the BIA and the Navajo Nation in early January 2003.

At the January 2003 hearing, the juvenile court declared Erica a dependent child and declared Billy M. to be Erica's biological father. Additional services were ordered for the mother. No services were ordered for Billy M., who remained in custody awaiting trial. In the meantime, Erica was continued in foster care.

When Erica was first returned to foster care in November 2002, DCS was ordered to evaluate relative placements. Billy M.'s counsel was to provide information regarding possible relative placements. The mother asked that Erica be placed with the maternal grandmother. At the January 2003 hearing, the father's counsel indicated that the social worker was in the process of evaluating a paternal aunt for placement. The social worker was again ordered to investigate relative placements.

As of February 2003, the mother was no longer attending an inpatient program, and in July 2003 DCS recommended terminating the mother's services. The mother was

living with her grandmother and was unemployed. Her only source of income was social security benefits due to mental health issues. She was unable to obtain housing due to several evictions on her credit report. At a July 2003 review hearing, the parties agreed, and the juvenile court ordered, that the mother would be given four additional months, until November 2003, to obtain adequate housing and reunify with Erica. In the meantime, Erica was continued in foster care.

Regarding relative placement evaluations, the social worker reported in July 2003 that, in February 2003, she had written to the paternal aunt, Rose S., regarding placement, but had received no response. She was also unable to reach Rose S. by phone. Another paternal aunt, Dorothy H., told the social worker she was unable to care for Erica. The paternal grandmother was angry and uncooperative when informed in December 2002 that Erica was Billy M.'s child. She refused to give the social worker any family history information, and was not evaluated for placement. The maternal grandmother was assessed for placement, but did not have adequate housing.

Regarding the ICWA, the social worker further reported that she had received a letter from the Navajo Nation, dated March 17, 2003, indicating the tribe was unable to verify Erica's eligibility for enrollment with the information DCS had provided. A copy of the Navajo Nation's letter was attached to the report.

At a review hearing on January 6, 2004, the juvenile court terminated the mother's reunification services and set the matter for a section 366.26 hearing.[3] By this time, a prospective adoptive family had been located. On January 9, Erica was placed with a prospective adoptive family. The social worker reported Erica's new placement on January 30. As of that date, the father was in state prison. The mother was living in a one bedroom trailer in the high desert.

About one month before the January 6, 2004, hearing, Billy M. wrote a letter to the social worker informing her that his sister, Rose S., was now interested in having custody of Erica, and provided two phone numbers to contact Rose S. The matter was not mentioned at the January 6 review hearing. On January 22, Billy M. wrote to the court, reporting that DCS had not contacted his sister.

The section 366.26 hearing was held on May 4, 2004. In a section 366.26 report, the social worker reported that Erica was a healthy, developmentally normal two year old, who was bonded to her prospective adoptive parents. The juvenile court received into evidence a "packet of ICWA information, first page being a letter from the Navajo Nation [dated March 17, 2003]." The packet included forms SOC 318 and SOC 319, sent to the BIA and Navajo Nation in early January 2003. After reviewing the packet, the juvenile court found that the "ICWA has been satisfied."

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[3] In an unpublished opinion filed April 5, 2004, in case number E035058, this court denied the mother's petition for an extraordinary writ under rule 39.1B of the California Rules of Court.

Next, the social worker testified about DCS's assessment of the paternal aunt, Rose S., for placement. A placement assessment was initiated in March 2004. A Life Scan indicated that Rose S. had "a perjury charge from 1989 and [an] under the influence charge in 2003." The social worker did not know whether Rose S. had been charged with or convicted of either offense. Rose S. lived in a trailer in the high desert with her 15-year-old daughter and her fiancé. The fiancé lived at the home on the weekends. The fiancé had not undergone a Life Scan, but was on parole after being released from prison on a drug-related charge.

The social worker opined that placement with Rose S. would not be appropriate, because Rose S. and the mother were living in trailers on the same land. The mother had been living in her trailer since January 1, 2004. The social worker was concerned that Rose S. would allow the mother to have unauthorized contact with Erica, because Rose S. worked part time and did not have suitable, identified child care for Erica. And, during a supervised visit, the mother asked the social worker whether Erica would be allowed to sleep in a toddler bed in the mother's trailer, after Erica was placed with Rose S. The mother testified she would follow any court orders regarding contact with Erica. The father testified that he wanted Erica to be placed with Rose S. The social worker admitted that Rose S.'s placement evaluation was not complete.

At the close of the hearing, the juvenile court terminated the parents' rights and placed Erica for adoption. Both parents appeal.

DISCUSSION

A. *Adequate Notice Was Not Given Under the ICWA*

Both parents contend the juvenile court erroneously found that the ICWA's notice requirements were met. They argue that adequate notice was not given under the ICWA, because the record does not indicate that DCS fully investigated Erica's possible Indian heritage. We agree.

Congress enacted the ICWA "to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture . . . ." (25 U.S.C. § 1902.) Under the ICWA, an Indian child is "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe[.]" (25 U.S.C. § 1903(4); Cal. Rules of Court, rule 1439(a)(1)(A) & (B).)[4] "[T]he tribe determines whether the child is an Indian child and its determination is conclusive." (*In re Karla C.* (2003) 113 Cal.App.4th 166, 174; rule 1439(g)(1).)

"The ICWA confers on tribes the right to intervene at any point in state court dependency proceedings. [Citations.] 'Of course, the tribe's right to assert jurisdiction

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[4] All further references to rules are to the California Rules of Court.

over the proceeding or to intervene in it is meaningless if the tribe has no notice that the action is pending.' [Citation.] 'Notice ensures the tribe will be afforded the opportunity to assert its rights under the [ICWA] irrespective of the position of the parents, Indian custodian or state agencies.' [Citation.]" (*Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 253 (*Dwayne P.*).)

The ICWA's notice provision states: "In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary [of the Interior] in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary . . . ." (25 U.S.C. § 1912(a).)

The BIA acts as the agent for the Secretary of the Interior. (*Dwayne P., supra,* 103 Cal.App.4th at p. 253.) 25 Code of Federal Regulations part 23.11 currently provides that "copies" of notices sent under 25 Code of Federal Regulations part 1912(a) shall be sent to the area director of the BIA. (25 C.F.R. § 23.11(a) & (c).) For

proceedings in California, the area director is located in Sacramento. (*Id.* at subd. (c)(12).) Thus, even if the tribe is known, copies of the notice to the tribe must also be sent to the area director. And when the identity of the tribe is unknown, notice shall be sent to the area director. (*Id*. at subd. (b).)

"The requisite notice to the tribe serves a twofold purpose: (1) it enables the tribe to investigate and determine whether the minor is an Indian child; and (2) it advises the tribe of the pending proceedings and its right to intervene or assume tribal jurisdiction. [Citation.]" (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 470.)

"Since the failure to give proper notice of a dependency proceeding to a tribe with which the dependent child may be affiliated forecloses participation by the tribe, notice requirements are strictly construed. [Citation.] *Notice is 'absolutely critical' under the ICWA*. [Citation.] Courts have held that without discharging their duty to provide the notice required under the ICWA, *state courts do not have jurisdiction to proceed with the dependency proceedings*. [Citations.] Thus the failure to provide proper notice is prejudicial error requiring reversal and remand. [Citations.]" (*In re Samuel P.* (2002) 99 Cal.App.4th 1259, 1267, italics added.)

Both the juvenile court and DCS have an affirmative duty to inquire whether a dependent child is or may be an Indian child. (Rule 1439(d).) The notice requirement is triggered when there is *any suggestion* that a child has Indian ancestry. (*In re Nikki R.* (2003) 106 Cal.App.4th 844, 848; *Dwayne P.*, *supra,* 103 Cal.App.4th at p. 255.)

The BIA Guidelines set forth specific categories of information that must be included in the agency's notice under the ICWA. (25 C.F.R. § 23.11(a), (d) & (e); *In re C.D.* (2003) 110 Cal.App.4th 214, 224 (*C.D.*).) California courts have recognized that the BIA Guidelines, though not binding on the courts, "'represent a correct interpretation'" of the ICWA's notice requirements. (*Id*. at pp. 224-225.)

"Aside from information about the hearing and the tribe's right to intervene in the dependency proceedings, the BIA Guidelines state notice to a tribe 'shall include the following information, *if known*: [¶] (1) Name of the Indian child, the child's birthdate and birthplace. (2) Name of Indian tribe(s) in which the child is enrolled or may be eligible for enrollment. (3) All names known, and current and former addresses of the Indian child's biological mother, biological father, *maternal and paternal grandparents* and great grandparents or Indian custodians, including maiden, married and former names or aliases; birthdates; places of birth and death; tribal enrollment numbers, and/or other identifying information. (4) A copy of the petition, complaint or other document by which the proceeding was initiated.'" (*C.D., supra,* 110 Cal.App.4th at p. 225, first italics added.) The BIA Guidelines, at 25 Code of Federal Regulations part 23.11(e), also set forth various statements that must be included in the notice. California courts have acknowledged that the BIA Guidelines, though not binding on the courts, correctly interpret the ICWA's notice requirements. (*C.D., supra,* at pp. 224-225.)

Here, the ICWA notice requirement was triggered no later than December 2002, when Billy M.'s paternity was established. The augmented record shows that, shortly thereafter, DCS served the BIA and the Navajo Nation by certified mail/return receipt requested, with form SOC 319 entitled "Notice of Involuntary Child Custody Proceeding Involving an Indian Child," and with form SOC 318 entitled "Request for Confirmation of Child's Status as Indian."[5] The Navajo Nation responded to DCS by a letter dated March 17, 2003, stating it was unable to verify Erica's eligibility for enrollment "based on the information . . . provided."

The mother and father argue that the notice was inadequate under the ICWA, because forms SOC 318 and SOC 319 did not include some of the information described in the BIA Guidelines. Specifically, they note that the forms omitted to state: (1) Erica's birthplace; (2) the birthplaces of any of Erica's relatives; (3) the maternal grandmother's maiden name; and (4) the paternal grandfather's name. They argue that some of this information was readily available to DCS or could have been obtained from the parents or the father's sisters. They complain that DCS failed to show whether or to what extent

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[5] These forms were issued by the State of California Health and Welfare Agency and the Department of Social Services. (*C.D., supra,* 110 Cal.App.4th at p. 223.) At the time notice was given in early 2003, form SOC 319 was a required form. Preprinted on the form is the language: "'Required Form–No Substitution Permitted.'" (*Ibid*.) Forms SOC 318 and SOC 319 were superseded by form SOC 820 entitled "Notice of Involuntary Child Custody Proceedings for an Indian Child," issued August 2004, and form SOC 820 was superseded by forms JV-130 and JV-135, issued January 1, 2005.

it attempted to obtain any of the missing information from the parents or the father's relatives, other than the uncooperative paternal grandmother.

DCS responds that form SOC 318 did, in fact, include Erica's birthplace, and that the maternal grandmother's maiden name is irrelevant because there was no indication of Indian heritage on the mother's side of the family. DCS also argues that there is no evidence that it was given any information not included in forms SOC 318 and SOC 319.

We agree that notice was inadequate. "The burden is on the Agency to obtain all possible information about the minor's potential Indian background and provide that information to the relevant tribe or, if the tribe is unknown, to the BIA." (*In re Louis S.* (2004) 117 Cal.App.4th 622, 630.) DCS was "required to investigate whether this information was available [citation], or report no family member knew the information required by [25] Code of Federal Regulations [part] 23.11." (*In re S. M.* (2004) 118 Cal.App.4th 1108, 1117-1118.)

Here, however, DCS made no showing of whether or to what extent it attempted to obtain any family history information from anyone other than the uncooperative paternal grandmother, including the parents and the father's other known relatives. At a minimum, it appears that the birthplaces of the parents and the paternal grandfather's

name were either known to DCS or could have been readily obtained from one or both parents.[6]

The notice also failed to include information which neither parent has complained is missing but which is required to be given, if known. Specifically, the notice does not include: (1) any information concerning Erica's paternal great grandparents (their names, birth dates, birthplaces, places of death, tribal enrollment numbers); (2) the current and former addresses of any of Erica's relatives; or (3) the places of death of any of Erica's relatives. (25 C.F.R. § 23.11(d)(3).) DCS also made no showing of whether or to what extent it attempted to obtain this information, other than from the uncooperative paternal grandmother. It is also unclear whether a copy of the petition was included with the information sent to the BIA and the Navajo Nation. (*Id*. at subd. (d)(4).)

Accordingly, we reverse the orders terminating the mother's and father's parental rights and placing Erica for adoption. Before finding that proper notice was given under the ICWA, the juvenile court is to ensure that: (1) DCS fully investigates Erica's family history by undertaking a reasonable effort to obtain all of the information described in 25 Code of Federal Regulations part 23.11(d)(3); and (2) DCS gives proper notice to all

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[6] *In re Jennifer A.* (2002) 103 Cal.App.4th 692, 705 (agency made "little effort" to provide tribe with birthplaces of child and parents where parents were participating in proceedings); cf. *In re Gerardo A.* (2004) 119 Cal.App.4th 988, 995 (appellant father failed to show that agency did not make "adequate inquiry for Indian heritage information" where there was *no evidence* that other relatives could have been interviewed or could have supplied missing information); *In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1413 (same).

identified tribes and the BIA area director of all the information listed in part 23.11, to the extent the information is known or may be reasonably obtained.

And, "[t]o enable [the juvenile] court to review whether sufficient information was supplied, [DCS] must file with the court the ICWA notice, return receipts, and responses received from the BIA and tribes. [Citation.]" (*Alicia B. v. Superior Court* (2004) 116 Cal.App.4th 856, 865 (*Alicia B.*).) To the extent DCS is unable to obtain *any* of the information required to be given, DCS must report its efforts to the juvenile court to enable it to review whether all of the information required to be given was known or reasonably could have been obtained.

DCS contends its "[f]ailure to [c]ommence ICWA [n]oticing at the first 'suggestion' that Erica 'may' have Indian ancestry was harmless error [because] the Navajo Nation was subsequently unable to verify Erica's eligibility for enrollment in the Navajo Indian Tribe." We disagree. Without knowing whether and to what extent DCS, with reasonable diligence, could have obtained and provided additional family history information described in 25 Code of Federal Regulations part 23.11(d)(3), we are unable to discern whether there is a reasonable probability the Navajo Nation would still have been unable to determine that Erica was an Indian child.

DCS argues it is not required to "cast about" for family history information. (*In re Levi U.* (2000) 78 Cal.App.4th 191, 199.) We agree. Indeed, DCS is entitled to rely on a parent's representation that he or she has no Indian heritage. (*In re O.K.* (2003) 106

Cal.App.4th 152, 157.) But where a party informs the court or DCS or provides information suggesting a child is an Indian child (rule 1439(d)(2)(A)), DCS is required to undertake a reasonable effort to inquire about the child's Indian heritage and show it made such an effort by reporting the extent of its inquiry to the juvenile court. (*In re Louis S., supra,* 117 Cal.App.4th at p. 630; *In re S. M., supra,* 118 Cal.App.4th at pp. 1117-1118.) The agency should provide to the tribe all of the available information described in the BIA Guidelines, including notice of the tribe's right to intervene in the proceedings and a copy of the petition. (25 C.F.R., § 23.11(a), (d) & (e).)

B. *The Juvenile Court Did Not Abuse Its Discretion in Refusing to Place Erica With the Paternal Aunt, Rose S.*

The father contends the juvenile court and the social worker erred in denying his request to place Erica with her paternal aunt, Rose S. He argues that the social worker failed to fully evaluate Rose S. for placement, and that the juvenile court failed to independently determine whether the placement was in Erica's best interest. We conclude the juvenile court did not abuse its discretion in refusing to place Erica with Rose S., because sufficient evidence showed that the placement would not have served Erica's best interests.

Section 361.3 provides a "preference" for relatives when a child is removed from the custody of a parent and placed outside the home. The statute provides: "(a) In any case in which a child is removed from the physical custody of his or her parents pursuant

to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative. . . ." (§ 361.3, subd. (a).) The relative placement preference applies when a new placement becomes necessary, even after reunification services are terminated but not after parental rights have been terminated and a child has been placed for adoption. (*Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1032; § 361.3, subd. (d).)

The relative placement preference "'does not create an evidentiary presumption in favor of a relative, but merely places the relative at the head of the line when the court is determining which placement is in the child's best interests.'" (*Alicia B., supra,* 116 Cal.App.4th at p. 863.) In determining whether to place a child with a requesting relative, the court and social worker are to consider the factors listed in section 361.3, subdivision (a).[7] "The linchpin of a section 361.3 analysis is whether placement with a relative is in the best interests of the minor." (*Alicia B., supra,* at pp. 862-863.)

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[7] These factors are: "(1) The best interest of the child, including special physical, psychological, educational, medical, or emotional needs. [¶] (2) The wishes of the parent, the relative, and child, if appropriate. [¶] (3) The provisions of Part 6 (commencing with Section 7950) of Division 12 of the Family Code regarding relative placement. [¶] (4) Placement of siblings and half-siblings in the same home, if that placement is found to be in the best interest of each of the children as provided in Section 16002. [¶] (5) The good moral character of the relative and any other adult living in the home, including whether any individual residing in the home has a prior history of violent criminal acts or has been responsible for acts of child abuse or neglect. [¶] (6) The nature and duration of the relationship between the child and the relative, and the relative's desire to care, and to provide legal permanency for, the child if reunification is unsuccessful. [¶] (7) The ability of the relative to do the following: [¶] (A) Provide a safe, secure, and stable environment for the child. [¶] (B) Exercise proper and effective

[footnote continued on next page]

The juvenile court must exercise its independent judgment in assessing the relative placement, "rather than merely review [the agency's] placement decision for an abuse of discretion." (*Cesar V. v. Superior Court*, *supra,* 91 Cal.App.4th at p. 1033.) We review the juvenile court's placement decision for an abuse of discretion. We will disturb the juvenile court's decision "'only "'if we find that under all the evidence, viewed most favorably in support of the trial court's action, no judge could reasonably have made the order that he did.' [Citations.]" [Citation.]' [Citation.]" (*Alicia B., supra,* 116 Cal.App.4th at p. 863.)

Here, DCS attempted to contact Rose S. in early 2003, after the father advised that she was interested in being evaluated for placement. But Rose S. did not respond to DCS's written correspondence, and attempts to contact her by phone were also unsuccessful. Then, at the January 6, 2004, review hearing, the father said Rose S. had changed her mind and now wanted Erica to be placed with her. In March 2004, DCS initiated a placement evaluation, but soon discovered that placement with Rose S. would not be in Erica's best interest. The social worker was concerned that Rose S. would

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[footnote continued from previous page]
care and control of the child. [¶] (C) Provide a home and the necessities of life for the child. [¶] (D) Protect the child from his or her parents. [¶] (E) Facilitate court-ordered reunification efforts with the parents. [¶] (F) Facilitate visitation with the child's other relatives. [¶] (G) Facilitate implementation of all elements of the case plan. [¶] (H) Provide legal permanence for the child if reunification fails. [¶] . . . [¶] (I) Arrange for appropriate and safe child care, as necessary. [¶] (8) The safety of the relative's home. . . ." (§ 361.3, subd. (a).)

allow Erica to have unauthorized contact with the mother, because Rose S. and the mother lived in close proximity to each other, and because Rose S. worked and did not have suitable, identified child care. The mother had expressed interest in having Erica stay with her, after being placed with Rose S.

Accordingly, the juvenile court did not abuse its discretion in not ordering further evaluation of Rose S. and in not ordering Erica placed with Rose S. The evidence clearly showed that the placement would not have served Erica's best interests, regardless of what a further evaluation, including a full investigation of Rose S.'s possible criminal history, would have revealed. Additionally, Rose S. became interested in Erica very late in the proceedings, nearly two years after Erica was first detained in February 2002.

DISPOSITION

The orders terminating parental rights and placing Erica for adoption are reversed. The juvenile court is directed to ensure that DCS complies with the ICWA. If no tribe

intervenes in the proceedings after proper notice is given, then the juvenile court shall reinstate the orders. (*Dwayne P., supra,* 103 Cal.App.4th at p. 261.)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

/s/ King
J.

We concur:

/s/ Richli
Acting P.J.

/s/ Ward
J.